

DO I GET AN INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE? (ICEC)

and the entire affidavit and waiver.

submit a completed department application form bearing the applicant's initial notarized signature in which you swear or affirm under oath that the information contained in the form are true and accurate to the best of your ability.

submit documentation confirming the applicant is engaged in an independently established business.

submit a notarized waiver.

a fee of \$125.

USING THE CERTIFICATE CAN BE COSTLY.

the applicant will have the authority to end the working relationship between an independent contractor (IC) and his/her hiring company. Department may suspend or revoke independent contractor exemption certificate.

if certificate has been suspended or the IC and the hiring agent will be put to rest that the IC's status is no longer validly presumed. The hiring agent may be responsible for workers' compensation on that IC if the IC continues to work or under a suspended or revoked independent contractor exemption certificate.

up to \$1000 per violation may be assessed against the hiring agent if: control is exerted to the extent it creates employer/employee relationship, or

- b) the hiring agent requires an employee to adopt IC status to avoid their obligations to provide workers' compensation coverage.

The same fines may be assessed against an IC for:

- a) performing work as an IC without first obtaining a certificate,
- b) performing work as an IC when the Department has revoked or denied a certificate,
- c) transferring to another person or allowing another person to use a certificate that was not issued to that person, or
- d) misrepresenting the person's status as an IC.

WHO DECIDES?

Whether one is an independent contractor or an employee is a complex issue. The Independent Contractor Central Unit (ICCU) investigates working relationships and determines if the worker(s) are ICs or employees. Wage withholding, unemployment insurance, workers' compensation, human rights, and wage and hour issues are all decided using the same standards, and by one agency, the ICCU. Decisions made by ICCU are binding upon other agencies, so an employer will receive one decision from the state in a timely manner.

INDEPENDENT CONTRACTOR EXEMPTIONS.

Owners of a business that consider themselves independent contractors must have workers' compensation coverage on themselves or

obtain an Independent Contractor Exemption Certificate. When approved, this exempts an individual from workers' compensation and unemployment insurance. A sole proprietor, working member of a partnership or member-managed limited liability company may apply for the exemption.

Corporate officers of corporations and managers of manager-managed limited liability companies may apply for the exemption certificate. Officers and managers would be exempt from workers' compensation but not from unemployment insurance. Please contact unemployment insurance at (406) 444-3634.

The exemption is valid for 2 years at a cost of \$125. Any employees hired by the independent contractor must be covered by a workers' compensation policy.

Exemption forms are available at local Job Service offices, and on the website below.

For more information, contact the Independent Contractor Central Unit at (406) 444-9029.

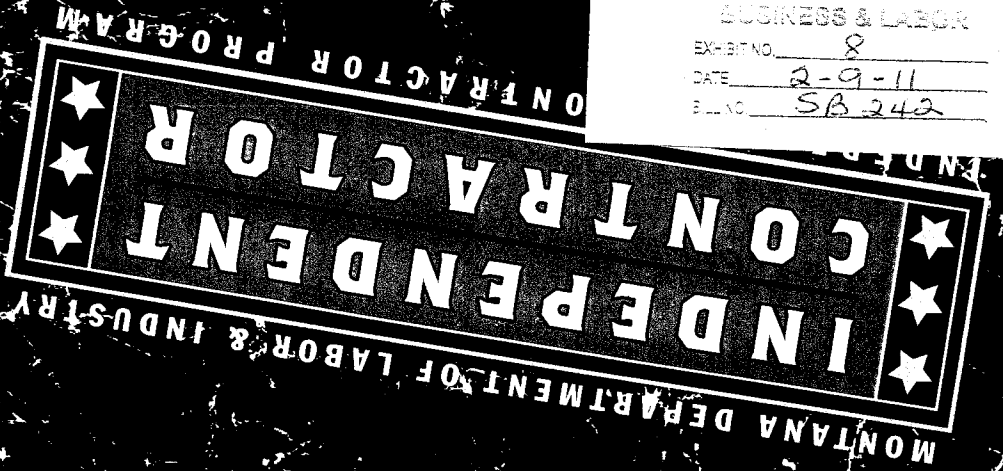
Montana Department of Labor & Industry
Employment Relations Division
1805 Prospect Avenue
PO Box 8011

Helena MT 59604
www.mtcontractor.com

The Montana Department of Labor & Industry has compiled this pamphlet as a guide only. This pamphlet does not cover all situations, and does not replace or supersede any law, administrative rule or regulation. For more detailed information regarding independent contractor laws, contact the Department of Labor & Industry.

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WHO IS AN
INDEPENDENT
CONTRACTOR &
WHO IS NOT?



INDEPENDENT CONTRACTOR

A MISUSED CATEGORY.

Individuals who sign independent contractor agreements or who hold exemptions may not be ICs in fact. The issuance of 1099s and lack of withholding taxes does not make an individual an independent contractor.

Contract labor agreements do not establish contractor status. By law, a worker cannot sign away their rights to workers' compensation or unemployment insurance coverage. The worker must meet the independent contractor criteria.

Workers hired on a temporary or part-time basis are considered employees unless they meet the independent contractor guidelines.

Persons who hold exemption certificates are presumed to be an independent contractor, but an IC status can be destroyed by control.

The Montana Supreme Court has stated the following four factors are indicators of control in a working relationship.

1. Evidence of control including the right to control.
2. The furnishing of equipment.
3. The method of payment.
4. The right to file without liability.

The considerations given to each of these factors is not a balancing process. A worker may be an employee simply by the strength of one of the four factors, while all need to be met to be an independent contractor.

TO BE AN INDEPENDENT CONTRACTOR (IC) IN MONTANA, A WORKER MUST BE:

- ✓ Free from control or direction.
- ✓ Engaged in their own independently established business, occupation, trade or profession.
- ✓ Hold an Independent Contractor Exemption Certificate (IEC).

★ The hiring agent explains, shows, and/or trains the worker how to perform the work. If you receive extensive instructions as how work is to be done, this suggests an employee relationship.

★ The hiring agent can release the worker from the job without notice or the opportunity to fix the problem. When the working relationship can be terminated without liability, the hiring agent has the control.

★ When there is no opportunity for profit or loss for the worker, they do not have control.

★ The hiring agent requires the worker to log the time worked on the job is an indication they have control.

THE DEPARTMENT RECOMMENDS FOLLOWING WHEN HIRING /

- ★ Have a written contract containing what, when, where and how.
- ★ Hire for a defined project with a beginning and ending date.
- ★ Hire those who are experts at the job.
- ★ Do not train or provide essential equipment or materials for the project.
- ★ Do not pay on a time basis; for example by the hour.
- ★ Ask for proof of General Liability Insurance.
- ★ Ask for proof of IECIC and verify it good standing by looking on the website www.mtcontractor.com or calling (406) 444-9029.
- ★ Obtain references and follow them up.
- ★ Choose to hire only those who can work without compensation insurance themselves.

THE EMPLOYER'S RESPONSIBILITY.

Employers are obligated to ensure the workers they hire as ICs truly are ICs. O proof of their insurance. They must make sure their relationship with the IC is an employee/employee relationship and not an employer/employee relationship. A way to destroy a good hiring agent/IC relationship and turn it into an employer/employee relationship is for the hiring agent to exert or have the right to exert control over the worker.

HERE ARE SOME COMMON THINGS TO THINK ABOUT WHEN DETERMINING CONTROL:

- ★ Payment is on a time basis rather than on a bid or project completion basis.
- ★ The pay is determined by the hiring agent, as opposed to the worker submitting a bid establishing the cost for the project.
- ★ The hiring agent provides substantial tools and equipment necessary to perform the job functions as opposed to the worker providing their own tools and equipment. The hiring agent instructs what tools to use and how to use them.
- ★ The hiring agent oversees how the work is performed as opposed to the worker completing the project in the manner and means they see appropriate.

STATE OF MONTANA DEPARTMENT OF LABOR AND INDUSTRY
INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE WAIVER
FOR SOLE PROPRIETOR, PARTNERSHIP OR LLP, AND MEMBER-MANAGED LIMITED LIABILITY COMPANY

WAIVER of Workers' Compensation Benefits

Instructions: Sign this waiver only if you understand and agree to all of its provisions.

EXHIBIT NO. 8

DATE

2.9.11

My name is: _____
(Last) (First) (Middle)

Social Security Number: _____

SB 242

I, _____, am executing this waiver in order to apply for an independent contractor exemption certificate with the Montana Department of Labor and Industry (Department).

Please **initial** all the following statements if you understand and agree:

- (Initial) I agree to waive all the rights and benefits to which I am entitled under Montana's Workers' Compensation Act, Title 39, Chapter 71, MCA, of Montana, for any work performed under an independent contractor exemption certificate. I understand and agree that if I am injured or develop an occupational disease while working for a hiring agent, I am precluded from obtaining any benefits under the Act for any and all damages arising out of any injury or occupational disease related to my work performance under an independent contractor exemption certificate. I understand and agree that if I die from an injury or occupational disease related to my work performance under an independent contractor exemption certificate, this waiver is effective against any of my beneficiaries as designated under the Act. I understand this waiver is not necessary for workers' compensation purposes if I elect to obtain workers' compensation insurance for myself as provided by the Act.
- (Initial) I understand and agree that if my independent contractor exemption certificate is granted, I will be conclusively presumed in court to have waived all benefits under the Act for work performed under the certificate.
- (Initial) I am engaged in an independently established trade(s), occupation(s), profession(s), or business(es) and I have provided accurate and truthful documentation to the Department to verify the existence of this occupation(s) in my affidavit application.
- (Initial) When acting as an independent contractor, I agree to maintain my status as an independent contractor by being free from control or direction over the performance of my services and the details of my work, both under contract and in fact. I agree hiring agents will only be permitted to offer direction and exercise control in matters essential to specifying the end result. I understand that while performing work under my independent contractor exemption certificate that I am waiving benefits under the Act unless I have a written or oral agreement to work as an employee for that hiring agent.
- (Initial) I understand and agree that I am responsible for all taxes related to my work as an independent contractor.
- (Initial) I understand the Department has the authority to investigate my working relationships as an independent contractor and may suspend or revoke my independent contractor exemption certificate if appropriate.
- (Initial) I am of sound mind, I am 18 years of age or older, I have read and understand this waiver, and I am voluntarily and knowingly executing this waiver free from duress, coercion, or misrepresentation from any person.

By signing this waiver, I understand and agree that I WAIVE ALL STATUTORY RIGHTS AND BENEFITS THAT I AM ENTITLED TO UNDER THE ACT.

By: _____
(Applicant Signature)

Dated: _____

State of _____

County of _____ : SS

SUBSCRIBED AND SWORN before me this _____ day of _____, 20____

(Signature of Notary)

(Notarial seal)

(Printed Name of Notary)

Residing at _____

My commission expires _____

State of Montana
Department of Labor & Industry
Brian Schweitzer, Governor



Employment Relations Division

WC Regulation Bureau
Independent Contractor Central Unit

The following is a list of suggested business documentation with possible point values considered by the Montana Department of Labor and Industry to demonstrate an Independent Contractor Exemption Certificate (ICEC) applicant is engaged in each occupation listed on their affidavit. An applicant must score 15 points for each different occupation listed. The Department has the discretion to assess the reliability of the business documentation in order to award points for the items submitted.

Please provide the Department with **photocopies** of the business documentation to score 15 points

6 (or more) POINT CATEGORY		Maximum Point Value
Workers' Compensation, Unemployment Insurance and Revenue accounts for employees (all three)		10
Memo of Understanding, contract evidencing Independent Contractor status or Emergency Equipment Rental Agreement <ul style="list-style-type: none"> • payment based on a completed project basis • beginning and ending date of the contract • liability for failure to complete the project • identifies who provides the materials and supplies • a defined body of work, complete project, or end result • signatures by all parties 		6
General commercial liability insurance or bonding		6
List of tools and equipment with approximate value (must be signed and dated)		6
Business tax forms or records (IRS Schedules C, E, F, or K – must be within the past two years)		6
Form 1099s (two different hiring agents and compensation amounts differing from IRS Schedules C, E, F or K)		6
Trucking company lease agreement		6
3 POINT CATEGORY		
Partnership agreement (must be provided if marking partnership business structure) <ul style="list-style-type: none"> • intent to form the partnership • contribution by all partners • a proprietary interest and right of control by the working partner • the sharing of profit/ loss • applicants role as a working partner • signatures by all parties 		3
Professional license or education certificate		3
City or county business license or permit		3
Registration of business name and structure with Montana Secretary of State		3
Articles of incorporation, organization or annual report (which reflects ownership for a Manager-Managed LLC and Corporation only)		3
Business location documentation (lease or rental agreement, business property tax statement, or IRS 8829)		3
Business bank account		3
Professional membership or affiliation		3
Advertising (internet website, newspaper, phone book or magazine)		3
Motor Carrier number		3
Two or more completed bids, estimates, proposals or billing invoices		3
1.5 POINT CATEGORY		
Pre-printed forms, business card or brochure		1.5
Invoices billed to business name		1.5
Advertising using sign on vehicle, yard, bulletin board or flyer		1.5
Orders receipt for printed hats, shirts or other apparel, pens or pencils		1.5
Documented proof of federal employer identification number (FEIN, TEIN or TIN)		1.5
Business credit card or purchasing account		1.5
Business telephone or utility bill		1.5
Vehicle registration in the business name		1.5
International fuel tax account number (IFTA)		1.5
Dunn & Bradstreet number		1.5



CONSTRUCTION CONTRACTOR'S REGISTRATION APPLICATION

This is a two-year registration.

Montana
Department of Labor & Industry
Employment Relations Division
Contractor Registration Unit
PO Box 8011
Helena MT 59604-8011
(406) 444-7734

Who has to register? Montana law requires **CONSTRUCTION** contractors with employees, corporations, or manager managed limited liability companies in the construction industry to register.

INSTRUCTIONS: Send completed form along with the \$53 application fee to the address listed above.

* You must have a Montana workers' compensation policy if you have employees. The policy must be Montana statutory coverage, which means "Montana", must be stated on Section 3A of your policy. Contact your insurance agent about your coverage if you have questions.

* When applying for your Construction Contractor Registration, the Independent Contractor exemption is required if you are **NOT** covered under a workers' compensation policy and are a sole proprietor, partner, limited liability partnership or a member of a member-managed limited liability company.

If the Independent Contractor exemption is required you should submit the exemption form with your Contractor Registration application. The Independent Contractor Exemption Certificate application fee (NON-REFUNDABLE) is \$125.

APPLICANT INFORMATION

Business Name		Registration Number (if first time applying, leave blank)	
Mailing Address		FEIN (Federal Employer Id Number) /SSN	
City	State	Zip Code	Phone ()

What is your business structure?

- ☐ SOLE PROPRIETOR ☐ MEMBER-MANAGED LIMITED LIABILITY COMPANY (LLC)*
☐ PARTNERSHIP ☐ MANAGER-MANAGED LIMITED LIABILITY COMPANY (LLC)*
☐ LIMITED LIABILITY PARTNERSHIP (LLP)* ☐ CORPORATION*

***Must be registered with Montana Secretary of State. For more information, contact them at (406) 444-3665.**

* Out-of-state contractors not currently working in Montana may request a "Bid Only" status. When a job is awarded in Montana you must purchase a Montana worker's compensation policy and notify us to change your status.

Are you applying as "Bid Only" status? ☐ Yes ☐ No

Are you in the construction industry? ☐ Yes ☐ No

Are you in the trucking industry? ☐ Yes ☐ No

Do you perform work on commercial, industrial or government jobs? ☐ Yes ☐ No

Do you have employees? ☐ Yes ☐ No

Name of workers' compensation insurance company: _____

Policy number: _____ Effective Date: _____

Do you lease employees from a Professional Employment Organization (PEO)? ☐ Yes ☐ No

Name of PEO: _____

Policy number: _____ Effective Date: _____

Do you get workers from a Temporary Service Contractor (TSC)? ☐ Yes ☐ No

Name of TSC: _____ Phone: _____

Address: _____ City/State/Zip Code: _____

(OVER)

Please list all owners, indicate whether this person is working in Montana and insured under a Montana workers' compensation policy. Sole proprietors, partners and members are required to have the Independent Contractor exemption if they are not insured under a Montana workers' compensation policy. Officers and managers working in Montana who own less than 20% or are not related to an officer or manager owning more than 20% must be insured under a Montana workers compensation policy.

Sole Proprietor, Partnerships and Limited Liability Partnerships (LLP), Member-Managed Limited Liability Company (LLC)
(Please complete the following information)

Corporations, Manager-Managed Limited Liability Company (LLC)

Applicant Name	Mailing Address	City/State/Zip Code	Social Security Number	Percent Owned	Working Member Yes/No	Workers Compensation Yes/No
1.						
2.						
3.						

(Please complete the following information)

Applicant Name	Percent Owned	Working Member Yes/No	Workers Compensation Yes/No	If Incorporated, are you related to an officer who owns 20% or more? Yes/No
1.				
2.				
3.				

Signature of applicant _____

Print Name of applicant _____

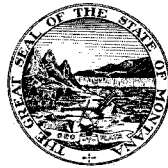
Construction Contractor Registration does not supersede requirements of other government agencies or entities.

For information or assistance with this application, please call (406) 444-7734 or visit our website at www.mtcontractor.com

BEFORE MAILING THIS APPLICATION: HAVE YOU INCLUDED THE FOLLOWING?

- _____ Completed application with signature(s)
- _____ Montana Workers' Compensation Policy Number and/or
- _____ Independent Contractor Exemption Affidavit (if required)
- _____ Application fee \$53 (Make checks payable to Department of Labor & Industry or DOLI)

State of Montana
 Department of Labor & Industry
 Brian Schweitzer, Governor



Employment Relations Division

WC Regulation Bureau
Independent Contractor Central Unit

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6 (or more) POINT CATEGORY		Maximum Point Value
Workers' Compensation, Unemployment Insurance and Revenue accounts for employees (all three)		10
Memo of Understanding, contract evidencing Independent Contractor status or Emergency Equipment Rental Agreement		6
<ul style="list-style-type: none"> o payment based on a completed project basis o beginning and ending date of the contract o liability for failure to complete the project o identifies who provides the materials and supplies o a defined body of work, complete project, or end result o signatures by all parties 		
General commercial liability insurance or bonding		6
List of tools and equipment with approximate value (must be signed and dated)		6
Business tax forms or records (IRS Schedules C, E, F or K – must be within the past two years)		6
Form 1099s (two different hiring agents and compensation amounts differing from IRS Schedules C, E, F or K)		6
Trucking company lease agreement		6
3 POINT CATEGORY		
Partnership agreement (must be provided if marking partnership business structure)		3
<ul style="list-style-type: none"> o intent to form the partnership o contribution by all partners o a proprietary interest and right of control by the working partner o the sharing of profit/ loss o applicants role as a working partner o signatures by all parties 		
Professional license or education certificate		3
City/county business license or permit		3
Registration of business name and structure with Montana Secretary of State		3
Articles of incorporation, organization or annual report (which reflects ownership for a Manager-Managed LLC and Corporation only)		3
Business location documentation (lease or rental agreement or IRS form 8829)		3
Business bank account		3
Professional membership or affiliation		3
Advertising (internet website, newspaper, phone book or magazine)		3
Motor carrier number		3
Two or more completed bids, estimates, proposals or billing invoices		3
1.5 POINT CATEGORY		
Pre-printed forms, business card or brochure		1.5
Invoices billed to business name		1.5
Advertising using sign on vehicle, yard, bulletin board or flyer		1.5
Orders receipt for printed hats, shirts or other apparel, pens or pencils		1.5
Documented proof of federal employer identification number (FEIN, TEIN or TIN)		1.5
Business credit card or purchasing account		1.5
Business telephone or utility bill		1.5
Vehicle registration in business name		1.5
International fuel tax account number (IFTA)		1.5
Dunn & Bradstreet number		1.5